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MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

P. O. BOX 147
TORRANCE, CALIFORNIA

Contract No. 196-1792

Req. No. _____

Account No. _____

This Agreement, Made the twelfth day of October in the year One Thousand Nine Hundred and seventy, by and between the E. M. Penn Construction Company, 3932 No. Downing Ave., Baldwin Park, Calif. 91706 hereinafter called the Contractor, and the Montrose Chemical Corporation of California, hereinafter called the Owner.

Witnesseth: That the Contractor and the Owner for the consideration hereinafter named, agree as follows:

Article 1. The Contractor agrees to provide all of the material, equipment and labor and to perform all of the work necessary to line the Waste Water Storage Pit

as described in the specifications in Article II see page 2 and shown on the plans or drawings as prepared by Architect, Engineer for the erection and completion of

to be erected at Montrose Chemical Corp. of Calif. plant site. and to do, to the satisfaction of the Owner and said Architect, Engineer, everything required of the Contractor by the drawings and specifications, including the General Conditions thereof, except as herein expressly modified or changed, it being agreed that such drawings and specifications, including the General Conditions thereof, are as fully a part of this Agreement as if hereto attached or herein repeated. It is further agreed that the decision of the Owner and Architect, Engineer as to the true construction and meaning of said drawings and specifications shall be final.

SPECIFICATIONS

- 1) Remove and dispose of existing concrete curbs, gutters and walks (piping and mechanical equipment removed by others).
- 2) Reshape the pit banks to final grade and slope of 1 to 1. Establish the bottom elevation approximately twenty (20) feet below the existing curb located on the south side of the pit. The bottom will slope one (1) foot to the southwest corner. Compaction of the earth will be 90% of the relative density.
- 3) Any excess or unsuitable material will be disposed of at a Type "I" dump.
- 4) Build an MX access ramp. This ramp is to be located between the existing power pole and the concrete block structure.
- 5) Guniting, to attain its maximum impermeability, must be of the dry shot type with, in this instance, a thickness of not less than four (4) inches. Type V Portland cement will be used. The surface will be a gun finish with a light brooming. If over working the fresh surface with finishing tools occurs, the guniting has a tendency to check and crack, which could cause loss of water ~~XXX~~ tightness.
- 6) The guniting will be cured with water for a period of not less than four (4) days.
- 7) 10 mil polyethylene lining beneath the guniting is included.
- 8) Contractor will place wooden forms to work to at top of the slope to attain a uniform appearance.
- 9) Reinforcing will be of welded wire mesh, six (6) inches o.c., four (4) gauge.
- 10) Existing structures in the immediate area will be covered for protection from rebound.
- 11) Water and power are to be supplied within 50 feet of the work area.
- 12) To be completed in approximately 26 working days.

Article III. Subject to additions and deductions as hereinafter provided, the Contractor shall receive for the performance of said work the sum of ~~sixteen thousand one hundred and thirty nine and 80/100~~ ^(\$16,139.22) DOLLARS in current funds as follows: during the satisfactory progress of the work, on or before the fifteenth day of each month, eighty-five per cent (85%) of the value of labor or materials wrought into the work up to the first day of the month, based on estimates prepared by the Contractor and approved by the Owner, less the aggregate of previous payments. All invoices to be submitted in triplicate.

Within sixty-five (65) days after the satisfactory completion of the entire work and acceptance thereof by the Architect, Engineer and the Owner, the balance due under this Agreement shall be paid. Before any payment shall be made to the Contractor, such Contractor shall submit evidence satisfactory to the Owner that all payrolls, material bills, and other indebtedness connected with the work have been paid, and that the Contractor is not in default in respect of any of his obligations under this agreement. In no case, however, shall the Contractor be entitled to a payment which, in the judgment of the Owner, will leave the balance withheld insufficient to complete the work. Any and all sales and use taxes which may be levied upon this work, or upon any material furnished by the Contractor, are included in the contract price, unless otherwise provided in this Agreement.

Article IV. The Owner may, without invalidating this Agreement, make changes by altering, adding to or deducting from the work, but the fair value of the same shall be added to or deducted from (as the case may be) the contract price hereinabove set forth. No claim for extra charge for such changes shall be valid unless a proper estimate, in writing, of the same, before its commencement, shall have been submitted, agreed to and signed by the Owner, and unless such work is done in pursuance of a written order therefor from the Owner. Should any dispute arise respecting the fair value of work so omitted or added, the same shall be determined by arbitration in the manner hereinafter provided.

Article V. Should the Contractor be delayed in the prosecution or completion of the work by the act, neglect or default of the Owner, or Architect, Engineer or by any damage caused by fire or other casualty, for which the Contractor is not responsible, then the time fixed for the completion of the work shall be extended for a period equivalent to the time lost by reason of any or all the causes aforesaid. Such extension of time shall be determined and fixed by the Owner, but no such allowance shall be made unless a claim therefor is presented in writing to the Owner within forty-eight hours of the occurrence of such delay.

Article VI. The Contractor shall protect the Owner and the Architect, Engineer of said structure and the ground on which it stands, against all liens or claims for liens of every sub-contractor, mechanic, workman, or other person, persons, firms or corporations furnishing any materials or labor for the carrying out or completion of such work; and if at any time during the progress of such work the Contractor shall allow indebtedness to accrue for labor or materials, which has or may become liens on said structure or the ground on which it stands, the Owner, after three days' written notice served on the Contractor, or delivered to his last known address, may elect to discharge such indebtedness, charge the same to the Contractor, and deduct the amount so paid from the amount herein agreed to be paid to the Contractor; and the Owner may elect to terminate the employment of the Contractor hereunder, pursuant to the next article hereof.

Article VII. Should the Contractor become insolvent, or at any time refuse or neglect to supply a sufficiency of properly skilled workmen, or of materials of the proper quality, or fail in the performance of any of his obligations under this Agreement, then the Owner, after three days' written notice served on the Contractor or delivered at his last known address, may terminate the employment of the Contractor for said work, and for the purpose of completing the work may enter upon the premises, take possession thereof, and of all materials, tools, and appliances of said Contractor thereon, and may complete said work or employ any other person or persons so to do, and may provide the materials therefor, or may relet the same by contract. In case of such discontinuance of the employment of the Contractor, he shall not be entitled to receive any further payment until thirty-five days after the said work shall be wholly finished, at which time, if the unpaid balance of the amount to be paid shall exceed the expense incurred by the Owner in finishing the work, together with the Owner's damage, loss and outlays in the premises, such excess shall be paid to the Contractor, but if such expense, damage, loss and outlays shall exceed such unpaid balance, the Contractor shall immediately pay such deficiency to the Owner.

Article VIII. The Contractor agrees to pay the contributions or taxes in respect to or measured by the wages of his employees, which may be assessed for Old Age Security, Unemployment Insurance, and otherwise, by the Federal Government and by any State having jurisdiction over him or his employees, or over the work, and to accept exclusive liability for such contributions or taxes, and any and all penalties or costs assessed or incurred in connection therewith. The Contractor further agrees to indemnify and protect and save harmless the Owner, and Architect, Engineer, against liability for, or on account of such contributions, taxes, penalties, and costs which may be assessed under the authority of any such laws or regulations, against the Owner and Architect, Engineer, in respect to, or measured by the wages of his employees.

Article IX. The Contractor agrees to provide, maintain and pay compensation for injuries and occupational diseases sustained by any of his employees arising out of or in the course of employment on or about the within work, in accordance with the provisions of the laws of any state having jurisdiction over the work, the Contractor, or his employee; and further agrees to carry insurance, in a company satisfactory to the Owner, fully protecting himself against claims which may be made against him under said laws, and agrees to deposit said policies, a true copy thereof, or approved certificates of insurance by the carriers thereof, with the Owner. The Contractor agrees to indemnify and to hold the Owner, and the Architect, Engineer harmless from and against any and all claims, demands or suits which may be made or brought against the Owner, or Architect, Engineer by the Contractor's employees in connection with or on account of any claims made by said employees under any of the terms and provisions of the Workmen's Compensation and Workmen's Occupational Disease laws aforesaid.

Article X. The Contractor shall provide, maintain and pay for public liability insurance in a company satisfactory to the Owner in limits as follows: \$100,000.00
\$300,000.00 to protect himself, the Architect, Engineer and the Owner of said structure, against all claims for damages for personal injuries arising directly or indirectly from operations carried on by the Contractor for the completion of such work, and furnish the Owner with a true copy of such policy or approved certificate of insurance by the carrier thereof. The Contractor agrees to indemnify and to hold the Owner and Architect, Engineer harmless from and against any and all claims, demands and suit which may be made or brought against the Owner or Architect, Engineer for personal injuries arising directly or indirectly from operations carried on by the Contractor for the completion of such work.

Article XI. The Contractor shall provide maintain and pay for property damage insurance in a company satisfactory to the Owner in the amount of \$25,000.00
\$50,000.00

_____ to protect the Owner of said structure, and the Architect, Engineer from any loss, expense, damage or suits arising out of any claim or demand for damages for injury to property arising from operations carried on by the Contractor for the completion of such work, and to furnish the Owner with a true copy of such policy or approved certificate of insurance by the carrier thereof. The Contractor agrees to indemnify and to hold the Owner and Architect, Engineer harmless from and against any and all claims, demands and suits which may be made or brought against the Owner or Architect, Engineer for damages for injury to property arising directly or indirectly from operations carried on by the Contractor for the completion of such work.

Article XII. The Contractor shall provide, maintain and pay for public liability and property damage insurance on all cars and trucks and other equipment operated on the public highways in connection with this work, in a company satisfactory to the Owner, to protect himself, the Architect, Engineer and the Owner of said structure, against all claims for damages for personal injuries and injury to property arising directly or indirectly from operations carried on by the Contractor for completion of such work, and furnish the Owner with true copy of such policy or approved certificate of insurance by the carrier thereof. The Contractor agrees to indemnify and to hold the Owner and Architect, Engineer harmless from and against any and all claims, demands and suits which may be made or brought against the Owner or Architect, Engineer for personal injuries and injury to property arising directly or indirectly from operations carried on by the Contractor for the completion of such work.

Article XIII. In addition to the insurance called for herein to be furnished by the Contractor, the Contractor agrees to require insurance of any sub-contractor or any other person furnishing labor to the sub-contractor in connection with this work in same limits and as herein specified in Article VIII, IX, X, XI, and XII and to furnish the Owner with true copies of such insurance policies or approved certificates of insurance by the carriers thereof.

Article XIV. The Contractor shall, if required by the Owner, at any time after execution of the contract, furnish a good and sufficient bond in the penal sum of the full amount of the contract price, in form and with such company as shall be satisfactory to the Owner, conditioned upon the faithful performance of this contract by the Contractor. Premium to be paid by _____

Contractor

Article XV. The Contractor shall continuously maintain adequate protection of all of his work from damage, including all materials delivered to the job site in connection with his work. Contractor shall immediately replace any and all materials which have been damaged by reason of his failure to maintain such protection, regardless of whether or not discovery of such damage be made before or after completion of the work.

Article XVI. Owner reserves the right to let other contracts in connection with this work. The Contractor shall afford other contractors reasonable opportunity for the introduction and storage of their materials and the execution of their work and shall properly connect and coordinate his work with theirs. If any part of Contractor's work depends for proper execution or results upon the work of any other contractor, Contractor shall inspect and promptly report to Owner and the Architect, Engineer any defects in such work that render it unsuitable for such proper execution and results. His failure so to inspect and report shall constitute an acceptance of the other contractor's work as fit and proper for the reception of his work, except as to defects which may develop in the other contractor's work after the execution of his work. Work done and performed by Contractor in violation of the foregoing shall, upon demand of Owner or of Architect, Engineer, be removed or re-adjusted by Contractor at his sole cost and expense. The decision of the Architect, Engineer shall be final as to the necessity for removal or re-adjustment of work under the provisions of this Article.

Article XVII. Contractor shall at all times keep the premises free from accumulation of waste material or rubbish caused by his employees or work, and at the completion of the work he shall remove all his rubbish from and about the premises and all his tools, scaffolding and surplus material and shall leave his work 'broom clean' or its equivalent. In case of dispute, Owner may remove the rubbish and charge the cost of such removal to the several contractors as the Architect, Engineer shall determine to be just.

Article XVIII. Contractor must give all requisite notices to the proper authorities, obtain all official inspections, permits and licenses made necessary by the work in his charge, and pay all proper and legal fees for the same. Contractor shall conform in all respects to the provisions and regulations of any general or local building act or ordinance, or of any local authority, which may be applicable to the said work, and indemnify the Owner against all penalties incurred by reason of the non-observance of any such provisions or regulations.

Article XIX. The Owner specifically reserves the right to post and record a Notice of Non-Responsibility under the Provisions of Section 1192 of the Code of Civil Procedure of the State of California.

Article XX. If any difference shall arise as to the rights or obligations of the parties under this contract which cannot be adjusted amicably by the parties hereto, the same shall be submitted to a Board of Arbitration composed of three (3) disinterested men, one to be chosen by the Owner, one by the Contractor, and the third to be elected by the Arbitrators so chosen. The decision of the three arbitrators thus chosen, or that of the majority of them, shall be final and conclusive upon the parties hereto.

Article XXI. The waiver by the Owner, of any breach by the Contractor shall not be deemed a continuing waiver, or a waiver of any subsequent breach, whether of the same or of a different provision of this agreement, and the Owner's failure to elect to suspend or terminate this agreement shall not effect the Owner's right to suspend, terminate, or cancel this agreement, for any subsequent breach by the Contractor.

Article XXII. In the event said work is delayed for a period exceeding forty-eight hours (48) by strikes (including jurisdictional strikes), secondary boycotts, lockouts, or any other cause, the Owner may, at its option, in order to avoid delays in the ultimate completion of the plant, take over and finish the work herein contracted for, and may award contracts to other parties for the same, and in such event, the amount to be paid the Contractor shall be the value of the materials and labor supplied and furnished by the Contractor, plus an additional sum of twenty percent (20%) of value of such labor and materials, to compensate the Contractor for overhead expenses and profit, and no other payments or amounts shall be due to the Contractor under this contract. In no event shall the Contractor receive under the foregoing provision a greater sum than the total contract price specified in Article III preceding.

Article XXIII. In the case of "Cost Plus" contracts, Contractor must turn in to Owner's Timekeeper daily, two copies of Contractor's daily payroll. Owner's Timekeeper will approve one copy for the Contractor and retain one copy for Owner's files. In a like manner on these contracts, all delivery receipts of material delivered to the job must be in duplicate, one copy approved by Owner's representative and returned to the Contractor, and the second copy retained in Owner's files.

Article XXIV. Should the Owner, upon the request of the Contractor or the Contractor's representative in the field, supply labor in connection with the performance of this contract, the Contractor shall, within 10 days after the final billing is rendered hereunder, reimburse the Owner for the labor so furnished by the Owner, such reimbursement to include all taxes, workmen's compensation, and other items which normally are a part of labor cost, and in addition thereto a charge of 15% over and above all of such labor cost.

In Testimony Whereof, the Contractor and the Owner, for themselves, their heirs, executors, administrators, successors and assigns have executed this Agreement, in duplicate, the day first above written.

Contractor _____ (SEAL)

Attest _____

By _____ Title _____

MONTROSE CHEMICAL CORPORATION OF CALIFORNIA

By _____ Purchasing Agent